

REMARKS**Status of Application**

Claims 23-43 are pending in the application. Claims 28, 34-41 and 43 are allowed. Claims 26, 27, 29, 32 and 42 are objected to merely as being dependent upon a rejected base claim. Claims 23-25, 30, 31 and 33 stand rejected. In view of the forgoing amendments and following remarks, applicant requests reconsideration of the rejection of the claims and allowance of all claims pending in the application.

Amendments to the Claims

Independent claim 23 is amended above to more clearly define the claim feature that the release handle is “remote from the latch bolt.” Applicant respectfully requests that this clarification be entered in claim 23 notwithstanding that the case is after final, because it was not earlier foreseeable by applicant that it would be needed to clarify this alternative distinction over Pennington. Applicant previously presented argument expected to be persuasive as to patentability of claim 23 over Pennington, including citation to decisions of the Federal Circuit Court of Appeals supporting applicant’s reliance on “adapted to” language in the claim feature “latch bolt adapted for compound sliding movement” to distinguish over the linear and rotary motion of Pennington.

Because the final Office Action maintained the position that the claim feature “latch bolt adapted for compound sliding movement” fails to distinguish over the linear and rotary motion of Pennington, applicant urges the Examiner in the remarks below to allow claim 23 based on the alternative distinction that Pennington lacks the required release handle “remote from the latch bolt.” Pennington’s latch handle 114 is instead connected directly and rigidly to Pennington’s latch shaft 94. In fact, the handle 114 is unitary with the latch shaft 94.

The amendment to claim 23 is deemed necessary or helpful in view of the Examiner and applicant's prior dealing with this "remote from" distinction. The "remote from" distinction was previously argued by applicant during prosecution of parent application 10/008,302 with respect to the Godfrey citation. The feature of a release handle remote from the latch bolt was argued to patentably distinguish over a cord 29 in Godfrey that Examiner Estremsky cited as a latch handle. Cord 29 of Godfrey is connected directly to the ring at the end of Godfrey's latch bolt 16. Under the Examiner's interpretation of "remote from," Godfrey's cord 29 satisfied the requirement for a release handle "remote from" a latch bolt, while applicant does not see Godfrey's cord 29 as "remote from Godfrey's latch bolt 16.

In view of this apparent issue as to the proper interpretation of "remote from" and in view of applicant's reliance on this feature as an alternative distinction over Pennington, applicant has submitted the foregoing amendment to claim 23 to clarify the claim language "remote from the latch bolt." More specifically, claim 23 is amended above to call out, in a more point-blank fashion, that the release handle is "remote from and not directly rigidly affixed to the latch bolt."

This clarifying amendment to claim 23 does not raise any new issues, because it merely incorporates expressly into claim 23 the definition provided in the specification (as originally filed) for the pre-existing claim language "remote from."

The clarifying language is supported by the definition of "remote from" in the specification at page 9, third sentence of paragraph [36]. It removes any doubt that claim 23 defines over the unitary latch shaft handle 114 of Pennington because, as discussed further below, Pennington has a latch handle 114 that is connected directly to a latch shaft 94. In fact, Pennington's handle 114 is unitary with latch shaft 94; it is a unitary side extension of latch shaft 94. Thus, Pennington lacks the required release handle "remote from the latch bolt," and the submitted amendment to claim 23 helps clarify that claim 23 is in condition for allowance.

Applicant respectfully requests, therefore, that the amendment to claim 23 be entered.

Claim 26 is rewritten to be in independent form including all of the limitations of its base claim 23. There are no intervening claims between claim 26 and base claim 23. As noted above, claim 26 has already been found allowable by Examiner Estremsky and was objected to merely as being dependent upon a rejected base claim.

Applicant respectfully requests, therefore, that the amendment to claim 26 be entered. The fee required for an additional independent claim is submitted herewith.

Upon entry of the amendment, claim 26 is in condition for allowance. Likewise, claims 27 and 29, both of which depend directly from claim 26 and have already been found allowable by Examiner Estremsky and were objected to merely as being dependent upon a rejected base claim, also are in condition for allowance.

Terminal Disclaimer

Applicant appreciates the Examiners indication that the Terminal Disclaimer filed on 9/8/04 has been accepted.

Patentability over Pennington

Claims 23-25, 30, 31 and 33 stand rejected under Section 102(b) over Pennington. The rejection is respectfully traversed.

As previously discussed, upon entry of the clarifying amendment to independent claim 23 presented above, claim 23 recites that the release handle for the latch bolt of the claimed egress window assembly is “remote from and not directly rigidly affixed to the latch bolt.” Pennington does not anticipate the claimed window assembly because it does not disclose a window assembly having a latch bolt release handle “remote from and not directly rigidly affixed to the latch bolt.”

Rather, Pennington has a latch handle 114 that is connected directly and rigidly to a latch shaft 94. In fact, the handle 114 of Pennington is unitary with latch shaft 94; it is a unitary side extension of latch shaft 94.

Applicant urges Examiner Estremsky to note that this patentable distinction of claim 23 over Pennington has always existed, and is merely clarified by the amendment to claim 23. As mentioned above, the claim language “not directly rigidly affixed to the latch bolt” appears *in ipsius verbis* in the specification at page 9, paragraph [36] as the definition of the phrase “remote from” in claim 23:

In certain preferred embodiments, release handle 26 is pivotally mounted at pivot pin 27 to pane 2 **remote from** latch bolt 10, that is, release handle 26 is **not directly rigidly affixed to** latch bolt 10. (Emphasis added.)

Thus, no new issue is presented and claim 23 should be held allowable over Pennington.

In addition, applicant wishes to reemphasize the position that Pennington falls short of anticipating the egress window assembly defined by the subject claims also because it does not disclose a latch bolt adapted for compound sliding movement. The term “compound sliding movement” used in claim 23 is expressly defined in the specification as:

“an angular, serpentine or curvilinear movement, ...”

See paragraph [44]. In contrast, the Pennington latch shaft moves back and forth linearly and, with or without rotary motion, this linear motion is not “angular” or “serpentine” or “curvilinear.” For this additional, independently sufficient reason, claim 23 is properly found to be patentable over Pennington.

Thus, for any or all of these reasons, Pennington fails to anticipate the invention of claim 23.

The other claims subject to the rejection, claims 24, 25, 30, 31 and 33, are dependent (directly or indirectly) from claim 23 and, therefore, are patentable for at least the same reasons.

Accordingly, the subject rejection is seen to be in error, and applicant respectfully requests that it be withdrawn.

Likewise, claims 32 and 42, both of which depend from claim 23 and already have been found allowable but objected to as being dependent upon a rejected base claim, now should be found in condition for allowance at least for the reasons discussed above with respect to claim 23.

Conclusion

In view of the foregoing remarks, all claims pending in the application are seen to be condition for allowance, which action is earnestly requested.

Respectfully submitted,
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